IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1086

Filed: 5 May 2015

Buncombe County, No. 11 JA 250

IN THE MATTER OF: P.A.

Appeal by respondent from orders entered 6 July 2014 by Judge Susan Dotson-Smith in District Court, Buncombe County. Heard in the Court of Appeals 6 April 2015.

Buncombe County Department of Social Services, by Hanna Honeycutt, for petitioner-appellee.

Appellate Defender Staples Hughes, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant.

Michael N. Tousey, for guardian ad litem.

STROUD, Judge.

Respondent-mother appeals from a permanency planning review order and guardianship order in which the trial court awarded guardianship of her minor child P.A. ("Parker") to Ms. H.-M. ("Ms. Smith"), ceased reunification efforts by the Buncombe County Department of Social Services ("DSS"), and waived further review hearings in this juvenile case.[1] Respondent contends that the trial court (1) violated her right to fundamentally fair procedures; (2) failed to verify that Ms. Smith had adequate resources to care appropriately for Parker; and (3) failed to make requisite

[1] Pseudonyms are used to protect the identity of the juvenile and for ease of reading.

findings of fact before waiving further review hearings. We vacate the trial court's orders and remand this matter for further proceedings.

I. Background

On 15 September 2011, DSS filed a petition alleging Parker was a neglected juvenile in that he did not receive proper care, supervision, or discipline from respondent and lived in an environment injurious to his welfare. DSS assumed non-secure custody of Parker that same day, and on 20 September 2011, DSS placed Parker with his biological father ("Father"), who lived with his girlfriend, Ms. Smith. On 25 September 2012, the trial court entered an adjudication and dispositional order on the juvenile petition. The trial court concluded that Parker was a neglected juvenile and that the conditions that led to the removal of Parker from respondent's care had not been fully resolved, and thus DSS should remain involved in the case. In summary, the adjudication of neglect was based upon respondent's pattern of residential instability and involvement in domestic violence with Father. Nevertheless, the trial court concluded that Father was a fit and proper person to care for Parker and granted him custody of Parker.

After a review hearing, the trial court entered an order on 2 April 2013 in which it concluded that sole custody of Parker should remain with Father and waived further review hearings in the juvenile case. But six days later, respondent filed a request for emergency custody alleging that Father had been arrested for three

counts of taking indecent liberties with A.H. ("Annie"), the minor child of Father's girlfriend, Ms. Smith. Ms. Smith had reported the incident to the police and had removed Annie from the home that she had shared with Father.

On 8 April 2013, DSS filed a new juvenile petition alleging that Parker was an abused and neglected juvenile based upon Father's alleged sexual abuse of Annie and his resulting incarceration. DSS again assumed non-secure custody of Parker and placed him with Ms. Smith. After conducting a hearing on the second juvenile petition, the trial court entered adjudication and dispositional orders on 3 September 2013. The trial court concluded that Parker was an abused and neglected child and that Father was a "responsible individual, as he has abused and seriously neglected the minor child."[2] The trial court continued custody of Parker with DSS, continued

[2] It is not entirely clear whether the trial court adjudicated Parker as neglected, abused, or both. The 8 April 2013 Juvenile Petition alleged both abuse and neglect, and specifically alleged that Parker was abused based upon the claim that Father had "committed, permitted, or encouraged the commission of a sex or pornography offense with or upon the juvenile in violation of the criminal law." But the only allegations of sexual abuse were the acts upon Annie; based upon the record, it appears that Parker was not present when these acts occurred. The 3 September 2013 order addressed the allegations of sexual abuse of Annie in detail but then concluded that "the minor child [(apparently referring to Parker, not Annie)] is an abused and neglected child, pursuant to N.C.G.S. §§ 7B-101(1), and 7B-101(15), in that the juvenile's parent has committed, permitted, or encouraged the commission of a sex or pornography offense with the juvenile or upon the juvenile in violation of criminal law; and as the juvenile lives in an environment injurious to the juvenile's welfare, and does not receive proper care, supervision, or discipline from their parent." The 3 September 2013 order thus appears to confuse two children, Annie, the actual victim of the sexual abuse, and Parker, who apparently was not abused but was properly adjudicated as neglected based upon N.C. Gen. Stat. § 7B-101(15) because he "live[d] in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." *See* N.C. Gen. Stat. § 7B-101(15) (2013). This apparent confusion in the order does not change our analysis of the order on appeal by respondent-mother, as she does not challenge the trial court's adjudication of neglect by Father. In fact, she herself filed a pro se "complaint and request for emergency custody" on 8 April 2013 based upon the same allegations of sexual abuse of Annie. (Original in all caps.)

to sanction placement of Parker with Ms. Smith, established several requirements for respondent to meet before regaining custody of Parker, and awarded respondent visitation with Parker several days each week.

On or about 22 October 2013, the trial court sanctioned a trial home placement in respondent's home. At first, this placement went well. But on 20 December 2013, respondent married a man with a long criminal history ("Mr. King"), whom she had just met in October 2013. Mr. King's convictions include assault with a deadly weapon, assault on a female, and drug-related offenses. Respondent did not notify DSS about her marriage to Mr. King. On 4 January 2014, after a domestic disturbance, respondent asked Mr. King to leave their home. Because of this incident, a criminal warrant was issued for respondent's arrest for an alleged domestic assault on Mr. King that she had committed in Parker's presence. On or about 21 January 2014, after learning of the outstanding warrant, DSS terminated the trial placement and returned Parker to Ms. Smith's care.

On 20 and 21 March 2014, the trial court held a permanency planning and review hearing. On 6 June 2014, the trial court entered an order in which it set the permanent plan for Parker as guardianship, granted guardianship of Parker to Ms. Smith, awarded respondent visitation with Parker, relieved DSS of making further efforts toward reunification of Parker with his parents, and waived further review hearings. The trial court also entered a separate guardianship order that granted

guardianship of Parker to Ms. Smith. Respondent gave timely notice of appeal from the permanency planning review order and guardianship order.

II. Fundamentally Fair Procedures

Respondent contends that the hearing lacked fundamentally fair procedures, because (1) she was held to a higher standard of conduct than Ms. Smith; (2) there was no evidence that Ms. Smith had a job; (3) Ms. Smith was not forced to comply with a case plan; (4) DSS abruptly transitioned the juvenile from her home to Ms. Smith's home when it had previously gradually transitioned the juvenile from Ms. Smith's home to her home; and (5) DSS's attorney extensively cross-examined her about a previous juvenile case involving one of her other children that had been dismissed. In short, respondent argues that the hearing was fundamentally unfair because the trial court subjected her, the child's biological mother, to closer scrutiny than it did Ms. Smith, an unrelated person. In addition, she notes, accurately, that Ms. Smith had made essentially the same bad choices regarding the men that she permitted to reside with her children and that Ms. Smith's child, Annie, had also been the subject of a DSS investigation, but that the trial court did not view these facts as disqualifying Ms. Smith as a guardian, while it did rely on similar facts in disqualifying respondent as a parent. In support of her argument, respondent relies on N.C. Gen. Stat. § 7B-100(1) and *In re K.N.*, 181 N.C. App. 736, 737, 640 S.E.2d 813, 814 (2007).

N.C. Gen. Stat. § 7B-100(1) states that a purpose of abuse, neglect, and dependency proceedings is "[t]o provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents[.]" N.C. Gen. Stat. § 7B-100(1) (2013). In *K.N.*, this Court held that the General Assembly achieved this aim "in part through statutory provisions that ensure a parent's right to counsel and right to adequate notice of such proceedings." 181 N.C. App. at 737, 640 S.E.2d at 814 (citing N.C. Gen. Stat. §§ 7B-1101.1, -1106 (2005)). But *K.N.* is inapplicable here, as respondent has not asserted that the trial court violated her right to counsel or her right to adequate notice. *See id.*, 640 S.E.2d at 814. Respondent's arguments are in substance directed at the trial court's weighing of the evidence and determination of the credibility of the witnesses. It is true that some of the evidence could be viewed as respondent suggests, but this court cannot reweigh the evidence or credibility as determined by the trial court. *See In re S.C.R.*, 198 N.C. App. 525, 531-32, 679 S.E.2d 905, 909 ("It is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." (brackets omitted)), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009).

With respect to DSS's attorney's cross-examination of respondent, we first note that respondent did not object to this questioning. But respondent couches this argument as based upon her right to "fundamentally fair" procedures and not any

particular evidentiary rule, relying on *Berger v. United States*, 295 U.S. 78, 88, 79 L. Ed. 1314, 1321 (1935). But *Berger* is inapposite. There, the prosecutor was

> guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general, of conducting himself in a thoroughly indecorous and improper manner.

Id. at 84, 79 L. Ed. at 1319. In contrast, here, DSS's attorney cross-examined respondent about a previous juvenile case in which the trial court had adjudicated one of respondent's other children neglected. Respondent emphasizes that this Court reversed that order and the trial court on remand dismissed the juvenile petition. *See In re C.Q.*, 183 N.C. App. 489, 645 S.E.2d 229 (2007) (unpublished). Respondent is correct that the adjudication order upon which she was cross-examined was reversed by this Court and therefore no longer had any legal effect. *See id.*, 645 S.E.2d 229. But after examining the entirety of the transcript and particularly respondent's testimony in context, we do not find that the questions on cross-examination were improper in any way. The questions related not to the legal conclusions of the prior adjudication but to facts as to prior events in the long history of DSS's involvement with respondent's children. We hold that the trial court did not violate respondent's

right to fundamentally fair procedures. *See K.N.*, 181 N.C. App. at 737, 640 S.E.2d at 814.

III. Guardian Verification

A. Standard of Review

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007). "Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court." *State v. Jones*, ___ N.C. App. ___, ___, 767 S.E.2d 341, 344 (2014).

B. Analysis

Respondent contends that the trial court failed to verify that Ms. Smith had adequate resources to care appropriately for Parker, in contravention of N.C. Gen. Stat. §§ 7B-600(c), -906.1(j) (2013). N.C. Gen. Stat. § 7B-600(c) provides: "If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-600(c). N.C. Gen. Stat. § 7B-906.1(j) similarly provides:

> If the court determines that the juvenile shall be placed in the custody of an individual other than a parent

> or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

N.C. Gen. Stat. § 7B-906.1(j). The trial court "may consider any evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." *Id.* § 7B-906.1(c). The trial court also "shall consider information from the parents, the juvenile, the guardian, any person providing care for the juvenile, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid in the court's review." *Id.*

In its order, the trial court specifically found that Ms. Smith "is aware of the legal significance of her appointment as legal guardian of the juvenile and will have adequate resources to care appropriately for the juvenile." The trial court's finding that Ms. Smith "is aware of the legal significance of her appointment as legal guardian" is supported by the evidence, as she was present in court and the trial court directly addressed Ms. Smith at the hearing:

> THE COURT: . . . Do you understand that the Court may be asking you to become a permanent guardian today?
>
> [Ms. Smith]: Yes, ma'am.
>
> THE COURT: And you understand the nature and legal significance of having that label?
>
> [Ms. Smith]: Yes, ma'am.

> THE COURT: And are you prepared to support this minor child, not only as an infant, but as a rebellious teenager as they grow?
>
> [Ms. Smith]: Yes.
>
> THE COURT: Do you have the financial and emotional ability to support this child and provide for its needs?
>
> [Ms. Smith]: I do.
>
> THE COURT: And do you have the willingness to reach out when your resources are running [out], so that you could make sure that they have whatever is in their best interest?
>
> [Ms. Smith]: Definitely.
>
> . . . .
>
> THE COURT: And you feel comfortable that you can provide this child with a home?
>
> [Ms. Smith]: Yes.

Respondent contends that this inquiry is insufficient to support the trial court's finding because the trial court questioned Ms. Smith without having her sworn. But respondent did not object to Ms. Smith's testimony and thus may not argue on appeal that the trial court erred in allowing Ms. Smith to testify without being sworn. *See In re Nolen*, 117 N.C. App. 693, 696, 453 S.E.2d 220, 222-23 (1995). This evidence supported the trial court's finding that Ms. Smith was "aware of the legal significance of her appointment as legal guardian of the juvenile[.]"

But possessing an understanding of the "legal significance" of guardianship is not necessarily the same thing as having "adequate resources" to serve as a guardian. *See* N.C. Gen. Stat. §§ 7B-600(c), -906.1(j). We have been unable to find sufficient evidence in the record to support a determination that Ms. Smith "will have adequate resources to care appropriately for the juvenile." DSS argues that specific findings of fact are not required by statute for the trial court to make the determinations under N.C. Gen. Stat. § 7B-906.1(j), citing to *In re J.E., B.E.*, 182 N.C. App. 612, 616-17, 643 S.E.2d 70, 73 (2007) (construing predecessor statute, N.C. Gen. Stat. § 7B-907(f) (2005), as well as N.C. Gen. Stat. § 7B-600(c) (2005)). After reciting the statutory requirements of N.C. Gen. Stat. § 7B-600(c) and N.C. Gen. Stat. § 7B-907(f), this Court noted that "neither N.C. Gen. Stat. § 7B–600(c) nor N.C. Gen. Stat. § 7B–907(f) require that the court make any specific findings in order to make the verification." *Id.* at 616-17, 643 S.E.2d at 73. But the next paragraph goes on to note the evidence as to the resources of the guardians:

> Here, the order appointing the maternal grandparents as guardians shows that the trial court received into evidence and considered a home study conducted by Grayson County (Virginia) Department of Social Services ("Grayson County"). In the home study report, Grayson County reported that:
>
> > The maternal grandparents have both raised children in the past. They are aware of the importance of structure and consistency in a child's life.
> >
> > The maternal grandparents both appear to have a clear understanding of the enormity of

> the responsibility of caring for B.E. They are aware of the negative impact the past several years have had on his life. They are committed to raising B.E. and providing for his needs regardless of what may be required. They have adequate income and are financially capable of providing for the needs of their grandson.
>
> They are in good physical health.
>
> Based on these findings, Grayson County recommended that the maternal grandparents be considered for placement of B.E. A home study conducted in 2001 regarding both J.E. and B.E. made similar findings and recommendations. Accordingly, based on its consideration of these reports, we conclude that the court adequately complied with N.C. Gen. Stat. § 7B–907(f) and N.C. Gen. Stat. § 7B–600(c).

Id. at 617, 643 S.E.2d at 73 (ellipses and brackets omitted). *In re J.E.* does not hold that no *evidence* is required regarding the resources of the guardian. *In re J.E.* is easily distinguishable from this case based upon the extensive evidence regarding the guardians presented in that case, which included two home study reports. *See id.*, 643 S.E.2d at 73.

It is correct that the trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian's situation and resources, nor does the law require any specific form of investigation of the potential guardian. *See* N.C. Gen. Stat. §§ 7B-600(c), -906.1(j). But the statute does require the trial court to make a determination that the guardian has "adequate resources" and some evidence of the guardian's "resources" is necessary as a practical matter, since the trial court cannot

make any determination of adequacy without evidence. *See id.*; *R.A.H.*, 182 N.C. App. at 57-58, 641 S.E.2d at 408 (holding that competent evidence must support a trial court's findings). Neither DSS nor the guardian ad litem ("GAL") has directed us to sufficient evidence in this record.

Although Parker had lived at least part of the time with Father and Ms. Smith before Father was incarcerated, at the time of the 20 March 2014 hearing, he had lived solely with Ms. Smith for the periods of April to October 2013 and then from 21 January 2014 until the hearing. Thus, the only evidence that could have been presented regarding Ms. Smith's actual history of caring for Parker on her own spanned only these two time periods, the most recent lasting less than 60 days. The GAL and DSS reports and court orders during the times when Parker was living with Father focused quite appropriately upon *Father's* situation and resources; Ms. Smith was noted only as Father's girlfriend who also resided in the home. The evidence regarding Ms. Smith's resources at the 20 March 2014 hearing consisted of the testimony of Teresa Jenkins, a DSS social worker, as follows:

> [DSS's counsel]: . . . And the Department is recommending that the Court award guardianship of the minor child to [Ms. Smith]; is that correct?
>
> [Jenkins]: Yes.
>
> [DSS's counsel]: And have you run a Child Protective Services and criminal record check on [Ms. Smith]?
>
> [Jenkins]: Yes.

[DSS's counsel]: And were there any concerns noted from those record checks?

[Jenkins]: No.

[DSS's counsel]: Have you visited the home of [Ms. Smith]?

[Jenkins]: Yes.

[DSS's counsel] Have you found it to be appropriate?

[Jenkins]: Yes.

[DSS's counsel]: And can you describe the nature of the relationship between [Parker] and [Ms. Smith]?

[Jenkins]: They are very bonded.

[DSS's counsel]: Are there other children in the home?

[Jenkins]: Yes.

[DSS's counsel]: How many other children?

[Jenkins]: One.

[DSS's counsel]: And is that child a boy or girl?

[Jenkins]: It's a girl.

[DSS's counsel]: What is her name?

[Jenkins: Annie.]

[DSS's counsel]: And how old is [Annie]?

[Jenkins]: Eight.

[DSS's counsel]: Eight. And does [Parker] have a

> relationship with [Annie]?
>
> [Jenkins]: Yes.
>
> [DSS's counsel]: And how would you describe that relationship?
>
> [Jenkins]: I have seen them interact in very positive manners. There are some sibling-like conflicts at times.
>
> [DSS's counsel]: Has [Ms. Smith] been able to provide for all of [Parker]'s medical, dental, [and] financial needs?
>
> [Jenkins]: Yes.
>
> [DSS's counsel]: And do you have any concerns about [Parker] being in [Ms. Smith's] care?
>
> [Jenkins]: No.

On cross examination, Jenkins further testified as follows:

> [Respondent's counsel]: How many times has [Ms. Smith] moved with [Parker]?
>
> [Jenkins]: I do not know exactly.
>
> [Respondent's counsel]: Repeatedly; is that true?
>
> [Jenkins]: There have been at least three addresses that I have seen him at.
>
> [Respondent's counsel]: Okay. And there is another child in that home?
>
> [Jenkins]: Yes.
>
> [Respondent's counsel]: And it's just the three of them; just [Ms. Smith], her daughter [Annie]—is that her daughter?

> [Jenkins]: Yes.
>
> [Respondent's counsel]: And then [Parker], just those three?
>
> [Jenkins]: There is a roommate.
>
> [Respondent's counsel]: And a roommate?
>
> [Jenkins]: Yes.
>
> [Respondent's counsel]: How many bedrooms is the home that she's in currently?
>
> [Jenkins]: It is a three-bedroom.
>
> [Respondent's counsel]: Okay. Do the children share a room?
>
> [Jenkins]: No.
>
> [Respondent's counsel]: Okay.
>
> [Jenkins]: The daughter shares a room with the mother.
>
> [Respondent's counsel]: So [Parker] has his own room?
>
> [Jenkins]: Yes.

The trial court also considered the GAL reports, but these added no substantial information to the testimony above regarding Ms. Smith's resources. The GAL report filed on or about 14 May 2013 noted:

> Currently, [Parker] resides in the home of [Ms. Smith], the former girlfriend of his father, who is living in an apartment in West Asheville with friends. There, [Parker] lives with [Ms. Smith]'s daughter, [Annie], and

> approximately two other children and one adult female.
> . . . .
> . . . [Parker] has his own bed and shares a room with [Annie.]

Ms. Smith's unsworn affirmative answer to the trial court's inquiry as to whether she had "the financial and emotional ability to support this child and provide for its needs" alone is not sufficient evidence, as this is Ms. Smith's own opinion of her abilities. No doubt, had the trial court asked respondent the same question, she also would have said "yes," but her answer alone would not have been sufficient evidence of her actual resources or abilities to care for Parker either. The trial court has the responsibility to make an independent determination, based upon facts in the particular case, that the resources available to the potential guardian are in fact "adequate[.]" *See* N.C. Gen. Stat. §§ 7B-600(c), -906.1(j). In this case, there is no evidence at all of what Ms. Smith considered to be "adequate resources" or what her resources were, other than the fact that she had been providing a residence for Parker. *See id.* And the evidence indicated that, even in providing a residence, Ms. Smith had moved several times and had lived with friends or roommates. The trial court even seemed to recognize that Ms. Smith may at some point lack resources to care for Parker on her own, as indicated by the question: "And do you have the willingness to reach out when your resources are running [out], so that you could make sure that they have whatever is in their best interest?"

The evidence noted above is the only evidence which is cited by the GAL and

DSS as supporting the trial court's finding that Ms. Smith has "adequate resources" to be Parker's guardian, and upon our own examination of the record, we cannot find any additional evidence.[3] Therefore, the trial court's finding that Ms. Smith "will have adequate resources to care appropriately for the juvenile" is not supported by the evidence. For this reason, we vacate the trial court's determination that legal guardianship should be granted to Ms. Smith and remand for further proceedings.

IV. Waiver of Further Review Hearings

As we have already determined that the orders granting guardianship to Ms. Smith must be vacated for the reasons noted above and are remanding this case, further review hearings will be necessary. But because this issue is likely to arise on remand, we will address it in order to provide guidance to the trial court.

Respondent next contends that the trial court failed to make requisite findings of fact before waiving further review hearings, in contravention of N.C. Gen. Stat. § 7B-906.1(n). The GAL concedes that the order does not include the required findings but contends that there is sufficient evidence in the record to support the proper findings. A trial court may waive further review hearings if the court finds by clear, cogent, and convincing evidence each of the following:

(1) The juvenile has resided in the placement for a period

[3] We realize that DSS and the trial court may have been aware of more extensive background information about Ms. Smith and her resources than is reflected in this record, based upon the fact that DSS had presumably had some involvement with her family due to Father's sexual abuse of Annie. But we must base our analysis only on the evidence which appears in the record on appeal in this case.

> of at least one year.
>
> (2) The placement is stable and continuation of the placement is in the juvenile's best interests.
>
> (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.
>
> (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.
>
> (5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n). The trial court must make written findings of fact satisfying each of the enumerated criteria listed in N.C. Gen. Stat. § 7B-906.1(n), and its failure to do so constitutes reversible error. *See In re L.B.*, 184 N.C. App. 442, 447, 646 S.E.2d 411, 413-14 (2007) (construing predecessor statute, N.C. Gen. Stat. § 7B-906(b) (2005)).

Here, the trial court failed to make any findings of fact in support of the first, third, and fourth criteria set forth in N.C. Gen. Stat. § 7B-906.1(n). And it would have been impossible for the trial court to make a finding as to the first criterion that "[t]he juvenile has resided in the placement for a period of at least one year" since Parker had been placed with Ms. Smith for only about 60 days at the time of the March 2014 hearing. *See* N.C. Gen. Stat. § 7B-906.1(n). Accordingly, we hold that

the trial court committed reversible error in waiving further review hearings. *See L.B.*, 184 N.C. App. at 447, 646 S.E.2d at 413-14.

On remand, we also note that the trial court should more clearly address whether respondent is unfit as a parent or if her conduct has been inconsistent with her constitutionally protected status as a parent, should the trial court again consider granting custody or guardianship to a nonparent. As directed by this Court in *In re B.G.*:

> [T]o apply the best interest of the child test in a custody dispute between a parent and a nonparent, a trial court must find that the natural parent is unfit or that his or her conduct is inconsistent with a parent's constitutionally protected status.
>
> Here, the trial court concluded that it was in the best interest of Beth to remain with the Edwardses but failed to issue findings to support the application of the best interest analysis—namely that Respondent acted inconsistently with his custodial rights. Although there may be evidence in the record to support a finding that Respondent acted inconsistently with his custodial rights, it is not the duty of this Court to issue findings of fact. Rather, our review is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law. Accordingly, we must reverse the order awarding custody to the minor child's non-parent relative and remand for reconsideration in light of this opinion.

In re B.G., 197 N.C. App. 570, 574-75, 677 S.E.2d 549, 552-53 (2009) (citations and quotation marks omitted).

IV. Conclusion

For the foregoing reasons, we vacate the trial court's 6 June 2014 Subsequent Permanency Planning and Review Order and Guardianship Order and remand this matter for further proceedings.

VACATED AND REMANDED.

Judges HUNTER, JR and DILLON concur.